

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Squad #8	CCRB Case #: 201412522	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/17/2014 9:10 PM	Location of Incident: [REDACTED]	Precinct: 42	18 Mo. SOL 6/17/2016	EO SOL 6/17/2016	
Date/Time CV Reported Wed, 12/17/2014 11:25 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 12/17/2014 11:25 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM John Zorrilla	22991	933511	PSA 7
2. POF Christine Barrientos	29238	950051	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Miguel Frias	1309	930184	PSA 7
2. SGT Timothy Jaycox	04836	928533	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A.POM John Zorrilla	Force: PO John Zorrilla used pepper spray against § 87(2)(b) and § 87(2)(b)	[REDACTED]
B.POF Christine Barrientos	Force: PO Christine Barrientos used physical force against § 87(2)(b)	[REDACTED]
C.POM John Zorrilla	Discourtesy: PO John Zorrilla acted discourteously toward § 87(2)(b)	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]

Case Summary

On December 17, 2014, at approximately 9:10 p.m. (time established from Arrest § 87(2)(b) Board Review (BR 1), in front of § 87(2)(b) in the Bronx (BR 2), § 87(2)(b) and § 87(2)(b) were stopped in § 87(2)(b)'s car by officers from PSA 7. The following was alleged: PO John Zorrilla pepper sprayed § 87(2)(b) and acted discourteously toward § 87(2)(b) (Allegations A and C). PO Christine Barrientos kicked § 87(2)(b) (Allegation B). § 87(2)(b) and § 87(2)(b) were taken to the PSA 7 stationhouse. § 87(2)(b) was arrested with a top charge of obstructing governmental administration (OGA; BR 1) and issued Summons § 87(2)(b) for reckless driving (BR 3). § 87(2)(b) was released from the stationhouse with Summons § 87(2)(b) for disorderly conduct (BR 4). § 87(2)(g), § 87(4-b)

Video Footage

- On January 5, 2015, § 87(2)(b) provided video footage to the CCRB that he took during the incident. The footage is viewable in BR 6 and BR 7.
- On January 2, 2015, a subpoena was hand-delivered to the New York City Housing Authority for video footage from the incident location (BR 8). On February 12, 2015, a letter from NYCHA was received stating that the subpoena could not be fulfilled as there was no video at the location (BR 9).

Mediation, Civil and Criminal Histories

- § 87(2)(b)'s arrest (BR 1) rendered this case ineligible for mediation.
- On January 30, 2015, § 87(2)(b) and § 87(2)(b) filed notice of claims (BR 10) with the City of New York claiming emotional trauma, assault, battery, loss of reputation, violation of rights against unreasonable seizure and statutory rights under 42USC1983, mental and physical distress, and humiliation and fear. The amount sought in each is \$9,000,000.00.
- On August 2, 2015, a search of Office of Court Administration (OCA) records yielded negative results for any criminal conviction of § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) and the first involving § 87(2)(b) (BR 12).
- PO Zorrilla has been a member of service (MOS) for twelve years and has had seven other CCRB allegations pled against him in three cases (BR 13). None of these allegations have been substantiated. In CCRB 201306582, an allegation of force (pepper spray) was closed as complainant unavailable.
- PO Barrientos has been an MOS for four years and this is her first CCRB complaint (BR 14).

Potential Issues

- § 87(2)(b) did not participate in the investigation. On December 19, 2014, he scheduled his CCRB interview for December 29, 2014, and a letter was mailed to him that noted the appointment time and was not returned by the United States Postal Service (USPS). Two hours before his appointment, the undersigned investigator left a message for him reminding him of the appointment. He did not appear for this appointment and did not call ahead of time to cancel or reschedule. On December 29, 2014, a missed appointment letter was mailed to him and it was not returned by the USPS. Between December 30, 2014, and January 29, 2015, six calls were placed to him and a voicemail was left each time. On August 2, 2015, an online search of the New York City Department of Corrections Inmate Lookup Service (NYC DOC ILS) revealed that he was not incarcerated. To date, he has not contacted the undersigned investigator.
- § 87(2)(b) the complainant/witness, did not participate in the investigation. On December 29, 2014, she scheduled her CCRB interview for January 5, 2015, and a letter was mailed to her that noted the appointment time and was not returned by the USPS. She did not appear for this appointment and did not call ahead of time to cancel or reschedule. On January 5, 2015, a missed appointment letter was mailed to her and it was not returned by the USPS. Between January 5, 2015, and January 29, 2015, four calls were placed to her and a voicemail was left each time. On August 2, 2015, an online search of the NYC DOC ILS revealed that she was not incarcerated. To date, she has not contacted the undersigned investigator.
- § 87(2)(b) a witness identified by § 87(2)(b) did not participate with the investigation. On December 31, 2014, she scheduled her CCRB interview for January 8, 2015, and a letter was mailed to her that noted the appointment time and was not returned by the USPS. She did not appear for this appointment and did not call ahead of time to cancel or reschedule. On January 8, 2015, she rescheduled her CCRB interview for January 15, 2015. On January 8, 2015, a missed appointment letter noting her new appointment time was mailed to her and it was not returned by the USPS. She did not appear for this appointment and did not call ahead of time to cancel or reschedule. On February 2, 2015, the undersigned investigator called her and she stated that she was in the hospital, and would call once she was discharged, which she did not do. On August 2, 2015, an online search of the NYC DOC ILS revealed that she was not incarcerated. To date, she has not contacted the undersigned investigator.

Findings and Recommendations

Allegations not pleaded

- **Abuse of authority (vehicle stop):** PO Zorrilla issued § 87(2)(b) Summons § 87(2)(b) (BR 3) for reckless driving, wherein it stated the following: § 87(2)(b) travelled at a high rate of speed on a public street and failed to signal when making a right turn onto § 87(2)(b). PO Zorrilla generated Arrest Report § 87(2)(b) (BR 1) wherein it stated the same narrative as the aforementioned summons and no charge for reckless driving was included on the report. Although § 87(2)(b) denied observing any traffic infraction committed by § 87(2)(b) this denial amounts to a summons dispute as it could not be established,

especially sans § 87(2)(b)'s testimony, that he was not speeding and used a turn signal. Therefore, a vehicle stop has not been pled.

- **Abuse of authority (search of vehicle):** In § 87(2)(b)'s complaint to IAB (BR 24), she alleged that officers searched § 87(2)(b)'s car. As she did not allege this to the CCRB and neither she nor § 87(2)(b) participated in the investigation, this allegation has not been pled.
- **Discourtesy (word):** In § 87(2)(b)'s complaint to IAB (BR 24), she alleged that an officer cursed at her. As she did not allege this to the CCRB in her email complaint (BR 15) and did not participate in the investigation, this allegation has not been pled.

Allegation A: Force: PO John Zorrilla used pepper spray against § 87(2)(b)

It is undisputed that PO Zorrilla used pepper spray against § 87(2)(b) and that § 87(2)(b) refused to get out of the car, an orange Dodge Challenger. § 87(2)(b) (BR 16) said that PO Zorrilla told § 87(2)(b) to exit the car several times. § 87(2)(b) and § 87(2)(b) argued with PO Zorrilla and said, "We're not doing nothing wrong. We're not getting out the car. There's no reason for us to get out the car." PO Zorrilla then pepper sprayed § 87(2)(b) which affected § 87(2)(b)'s eyes from where he sat in the front passenger's seat.

PO Zorrilla (BR 17) said that he asked § 87(2)(b) to step out of the car, an orange Dodge Charger, for safety purposes. When asked what about the Charger made PO Zorrilla feel unsafe, he said that when he pulled up behind it, he realized that an identical Charger had been involved in a shooting reported in the area. He could not say for certain that it was the same vehicle at the time. He could not recall the location of the shooting, except that it was within the confines of the 42nd Precinct. He could not recall the day of the shooting except that it occurred in 2014 and was at least one month before the incident date. He did not know the time of day the shooting occurred. He did not know if any arrests had been made in regard, the description of the perpetrators or who the victims were. He could not recall the license plate of the Charger involved in the shooting except that it had an out-of-state registration (he could not recall the state) when the shooting occurred. He did not know what detective was assigned to the shooting. He wanted § 87(2)(b) to step out of the car so that he could feel safe when deciding whether to issue § 87(2)(b) a summons or a warning. § 87(2)(b) refused to exit the car, told PO Zorrilla that he was willing to fight, and called him a "pussy ass nigger." PO Zorrilla opened the car door, put one handcuff on § 87(2)(b)'s wrist and pepper sprayed him. At this time, § 87(2)(b) was considered under arrest for OGA for refusing to get out of the car so that PO Zorrilla could make a decision about the summons. PO Zorrilla generated Arrest Report § 87(2)(b) (BR 1) wherein it stated that § 87(2)(b) refused to comply with officer orders and the top charge was OGA.

Sgt. Miguel Frias (BR 18) said that PO Zorrilla informed him of the information regarding the shooting involving the Dodge Charger at the time of the incident. Sgt. Frias was previously unaware of this. PO Zorrilla obtained this information from Sgt. Timothy Jaycox, the field intelligence officer (FIO). PO Zorrilla provided Sgt. Frias with no further information regarding the shooting. As the incident transpired so quickly, Sgt. Frias had no time to confirm this information at the scene. At the stationhouse, Sgt. Frias spoke to Sgt. Jaycox, who said that the information he had received about the Dodge Charger was inconclusive and there was no probable cause that § 87(2)(b)'s car was the same one involved in the shooting. Sgt. Jaycox did not inform on why. Sgt. Frias could not recall when Sgt. Jaycox said that the shooting occurred.

Sgt. Jaycox (BR 19), the FIO, said that § 87(2)(b) was of interest to the Department because his brother, known as "§ 87(2)(b)" is a high-ranking § 87(2)(b) and a few years ago, § 87(2)(b) was shot. No one was ever arrested in regard to the shooting. Sgt. Jaycox was

§ 87(2)(e), § 87(2)(f), § 87(2)(b)

The first video (BR 6) provided to the CCRB begins with § 87(2)(b) and § 87(2)(b) arguing with PO Zorrilla in regard to stepping out of the car. § 87(2)(b) is heard refusing to get out of the car more than once. This video lasts 28 seconds. The second video (BR 7) provided to the CCRB begins with § 87(2)(b) continuing to argue with PO Zorrilla. While PO Zorrilla is never seen pepper spraying § 87(2)(b) coughing is heard at the 00:42 minute mark, just before the video ends.

Pepper spray may be used when an officer reasonably believes it is necessary to establish physical control over someone resisting arrest, Patrol Guide Procedure 212-95 (BR 20).

§ 87(2)(b), § 87(2)(g)

Allegation B: Force: PO Christine Barrientos used physical force against § 87(2)(b)

§ 87(2)(b) alleged in her email complaint to the CCRB (BR 15) that PO Barrientos kicked § 87(2)(b) during the arrest. § 87(2)(b) (BR 16) did not allege this.

No interviewed officer acknowledged kicking § 87(2)(b) or seeing this occur.

§ 87(2)(b), § 87(2)(g)

Allegation C: Discourtesy: PO John Zorrilla acted discourteously toward § 87(2)(b)

§ 87(2)(b) (BR 16) said that after PO Zorrilla pepper sprayed § 87(2)(b) this affected his eyes from where he sat in the front passenger seat, and he exited the car of his own volition. PO Zorrilla came around the car to where § 87(2)(b) stood and knocked his cellphone out of his hand, causing it to fall to the ground. PO Barrientos and Sgt. Frias then handcuffed him.

PO Zorrilla (BR 17) said that after § 87(2)(b) was handcuffed and placed into a patrol car, he walked to the passenger's side of the car where § 87(2)(b) stood. He could not recall if § 87(2)(b) held anything in his hands and he could not recall knocking a cellphone out of his hands. He handcuffed § 87(2)(b) and escorted him to a patrol car. PO Barrientos (BR 21) could not recall PO Zorrilla knocking § 87(2)(b)'s cellphone out of his hands and Sgt. Frias (BR 18) said that he never saw PO Zorrilla do this.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

[Redacted text block]

Pod:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date